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# PRICE RESTRICTION ON THE RE-SALE OF CHATTELS.

THE Supreme Court of the United States has, in its recent decision of the case of Dr. Miles Medical Company *v.* John D. Park & Sons Company,[1] denied the right of the owners of chattels, not produced under patents or other statutory grant, to fix the prices at which such chattels might be re-sold to the intermediate dealers and to the ultimate purchasers for use or consumption. The conclusion that the vendor of chattels has no right to impose price-restricting conditions upon their re-sale was reached after arriving at the determination that the manufacturer or producer of chattels in whose production secret processes or other trade secrets are utilized has no different rights in marketing his product than has the owner of general chattel property. The latter determination is of greater interest because it overrides the view which had been generally accepted and had received judicial approval in an overwhelming preponderance of the courts in which this question had been raised.

The bill of complaint in the Miles case alleged the manufacture of proprietary articles or medicines under secret formulæ and by secret processes and the sale thereof under trade-marks and distinctive trade dress. In order, as was alleged, to prevent injury to complainant's business by the sale of these articles at competitive or "cut" prices, complainant adopted a system of contracts controlling the sale and re-sale of its preparations. This system contemplated a consignment to wholesale dealers, who were permitted to sell only to other contracting wholesale dealers and to retail dealers who had contracted with the complainant to sell its preparations at certain fixed prices. It was charged that the defendant, after having refused the opportunity to enter into a consignment contract, had unlawfully induced the complainant's wholesale and retail agents, by means of false and fraudulent representations, to violate their contracts by selling articles of complainant's manufacture to the defendant. It was further

[1] 220 U. S. 373 (1911).

charged that the defendant's motive in inducing such breaches of contract was to sell complainant's articles at cost or less to attract and secure custom for other merchandise. An injunction against the continuance of such acts was prayed.

These allegations would apparently bring the complaint within the doctrine that an actionable wrong is committed by one who without justification maliciously interferes between two contracting parties and induces one of them to break the contract to the injury of the other,[2] and that, in the absence of adequate remedy at law, equity will interfere to prevent the repetition of the wrong.[3] The case presented does not raise the question of inducing a breach of trust by an agent, because the contract system contemplated that the restriction should apply to the re-sale of goods when acquired by purchase as well as when held on consignment.

The defendant demurred to the complaint, attacking the legality of the contracts because in restraint of trade, thereby asserting such want of equity in the plaintiff's position as to deprive it of the protection of the court.

The questions raised and considered by the court were therefore limited to

(1) The right of an owner of articles manufactured under secret processes and formulæ to impose such restrictions as above outlined, and

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[2] Glamorgan Coal Co. Ltd. *v.* South Wales Miners Federation, [1903] 1 K. B. 118 (1902), 2 K. B. 545 (1903), 89 L. T. N. S. 393; Bowen *v.* Hall, 6 Q. B. D. 333 (1881); Cattle *v.* Stockton Water Works Co., 10 Q. B. 453, 458 (1875); Lumley *v.* Gye, 2 E. & B. 216 (1853); Transportation Co. *v.* Standard Oil Co., 50 W. Va. 611 (1902); Walker *v.* Cronin, 107 Mass. 555 (1871); Plant *v.* Woods, 176 Mass. 492 (1900); Chipley *v.* Atkinson, 23 Fla. 206 (1887); Benton *v.* Pratt, 2 Wend. (N. Y.) 385 (1829); Rice *v.* Manley, 66 N. Y. 82 (1876); Van Horn *v.* Van Horn, 52 N. J. L. 284 (1890); Heath *v.* Am. Book Co., 97 Fed. 533 (1899).

[3] Exchange Tel. Co. *v.* Central News Co., [1897] 2 Ch. D. 48; Exchange Tel. Co. *v.* Gregory, [1896] 1 Q. B. 147 (1895); Board of Trade *v.* Christie Co., 198 U. S. 236 (1905); Hunt *v.* N. Y. Cotton Exchange, 205 U. S. 322 (1907); Bitterman *v.* L. & N. Ry. Co., 207 U. S. 205 (1907); Jones *v.* E. Van Winkle Gin Works, 131 Ga. 336 (1908); Reynolds *v.* Davis, 198 Mass. 294 (1908); Beekman *v.* Marsters, 195 Mass. 205 (1907); Schubach *v.* McDonald, 179 Mo. 163 (1903); Flickenstein Bros. Co. *v.* Flickenstein, 66 N. J. Eq. 252 (1904); Martin *v.* McFall, 65 N. J. Eq. 91 (1903); American Law Book Co. *v.* Ed. Thompson Co., 84 N. Y. Supp. 225 (1903); Kinner *v.* L. S. & M. S. Ry. Co., 69 Oh. St. 339 (1904); Flaccus *v.* Smith, 199 Pa. St. 128 (1901); Nashville, etc. R. Co. *v.* M'Connell, 82 Fed. 65 (1897); Sperry & Hutchinson Co. *v.* Weber, 161 Fed. 219 (1908); Iron Moulders' Union *v.* Allis-Chalmers Co., 166 Fed. 45 (1908).

(2) The right of an owner of chattels manufactured or produced under ordinary circumstances to control the prices on all sales of his products.

It is intended in this discussion to consider these questions in the light of the common law only, both because of the impossibility of considering the numerous statutes within reasonable space limits, and because such statutes are either codifications of the common law, or, being wider in their scope, include the common-law prohibitions.

At common law limited restrictions as an incident to the sale of chattels are permissible.[4] The accepted test is that such restrictions must not be wider than the protection of the parties thereto demands nor so wide as to affect the public injuriously.[5] Thus a single contract determining the price of the re-sale of chattels, not dealing with all or a material portion of all such chattels in commerce, might, if conditions warranted it, be lawful. This common-law principle is not peculiar to "trade-secret" articles but is equally applicable to any chattel property. Until recently, however, the doctrine was generally accepted that the owner of "trade-secret" articles had special rights to impose restrictions upon the re-sale of his products.[6] The acceptance of this doctrine resulted both from an apparent similarity between the conditions surrounding articles manufactured under trade secrets and those manufactured under patents, and from an apparent analogy betweeen contracts relating to the sale of such articles and contracts relating to the sale of inventions, compositions, railroad tickets, trading stamps, and trade secrets themselves.

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[4] Elliman *v.* Carrington, [1901] 2 Ch. D. 275; Grogan *v.* Chaffee, 156 Cal. 611 (1909); Garst *v.* Harris, 177 Mass. 72 (1900); *cf.* Garst *v.* Hall & Lyon, 179 Mass. 588 (1901); Garst *v.* Charles, 187 Mass. 144 (1905); Clark *v.* Frank, 17 Mo. App. 602 (1885); Walsh *v.* Dwight, 40 N. Y. App. Div. 513 (1899); *cf.* Export Lumber Co. *v.* South Brooklyn Saw Mill Co., 54 N. Y. App. Div. 518 (1900).

[5] Horner *v.* Graves, 7 Bing. 735 (1831); Nordenfelt *v.* Maxim Nordenfelt Co., [1894] A. C. 535; United States *v.* Addyston Pipe & Steel Co., 85 Fed. 271 (1898); Park & Sons Co. *v.* Hartman, 153 Fed. 24 (1907); Gibbs *v.* Baltimore Gas Co., 130 U. S. 396, 409 (1889).

[6] Dr. Miles Med. Co. *v.* Goldthwaite, 133 Fed. 794 (1904); Dr. Miles Med. Co. *v.* Jayne, 149 Fed. 838 (1896); Dr. Miles Med. Co. *v.* Platt, Hartman *v.* Platt, World's Dispensary Med. Assn. *v.* Platt, 142 Fed. 606 (1906); Wells & Richardson Co. *v.* Abraham, 146 Fed. 190 (1906), aff. without report C. C. A. 2nd Circ.; Hartman *v.* Hughes, U. S. Circ. Ct. Dist. Minn., unreported; Paris Med. Co. *v.* Hegeman & Co., U. S. Circ. Ct. So. Dist. N. Y., unreported; Hartman *v.* Hobart, U. S. Circ. Ct. Dist. Kan., unreported.

Impetus was given to the approval of this special doctrine by the language of courts in the earlier cases in which this question apparently was involved. These cases include Garst *v.* Harris [7] and Elliman *v.* Carrington.[8] Each of these was a suit between the vendor and his vendee involving a single contract, not, so far as the records disclose, embracing a system restricting the entire trade in the commodity. Such contracts might well be valid in regard to any chattel property. Unfortunately, each of the courts apparently deduced from the ability of the vendor, because of his natural monopoly, to withhold entirely his article from commerce, his right, as a condition of giving his article to commerce, to limit his license to sell, in the form of a restriction of the price at which the article might be resold, thus basing the decision upon a right peculiar to the owner of "trade-secret" articles.

Additional confusion resulted from the many opinions in John D. Park & Sons Co. *v.* National Wholesale Druggists' Assn.,[9] wherein a bare majority of the Court of Appeals of New York agreed in the result, although only a minority agreed in the reasoning by which the result was reached. In this case the complainant sought to enjoin the defendants from carrying on a conspiracy interfering with the complainant's business, because in restraint of trade. The complaint described the articles in question as "patent medicines." It is a matter of common knowledge that few if any so-called "patent medicines" are in fact patented although in the production of all trade secrets are employed. The question having been submitted on demurrer, the Court of Appeals sustained the right of the defendants to combine to maintain prices, because the exclusive right of monopoly granted by the patent laws of the United States included the right to fix prices.[10] The court having thus decided this case upon an erroneous conception of the facts, the public accepted the decision as applying to the actual conditions and, in subsequent litigations in other courts, aided by this apparent precedent, litigants secured numerous decisions upholding the

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[7] 177 Mass. 72 (1900).

[8] [1901] 2 Ch. D. 275.

[9] 175 N. Y. 1 (1903).

[10] See Straus *v.* American Publishers' Assn., 177 N. Y. 473, 477 (1904), where the court expressly bases its decision in the Park case on the right of monopoly given by the patent laws.

right to maintain prices as a right peculiar to the employment of trade secrets.

The similarity of conditions surrounding the manufacture of articles under patents and under trade secrets is superficial and consists only in the monopoly of production enjoyed by both manufacturers. Even in this similarity there is the vital difference that the statutory monopoly of the patentee is under the protection of the law, while the natural monopoly of the possessor of a secret exists only as long as the secret is preserved, and is protected by law only against fraudulent discovery or disclosure.[11] The consideration for the statutory monopoly is the giving of the full benefit of discovery, after a period of exclusive use, to the general public.[12] The owner of a trade secret gives nothing to the public, the value of his property being dependent upon its secrecy. Hence public policy, as expressed in statutes or decisions, favors the statutory and opposes the natural monopoly. The natural monopoly is in the secret itself and has no relation to the article manufactured by its use when once it is offered as a subject of commerce.[13] The right and power to refrain from production cannot of itself embrace the right to sell, when produced, upon illegal conditions. Nor, as has been suggested,[14] can such conditions be imposed on the theory that they attach to personal property so as to bind equitably those who take with notice. A condition rightfully imposed on the original vendee cannot bind a sub-purchaser of chattels by operation of notice.[15] It will hardly be contended that conditions

[11] Vulcan Detinning Co. *v.* American Can Co., 67 N. J. Eq. 243 (1904); Stewart *v.* Hook, 118 Ga. 445 (1903); Westervelt *v.* Nat. Paper & Supply Co., 154 Ind. 673 (1900); Peabody *v.* Norfolk, 98 Mass. 452 (1868); Chadwick *v.* Covell, 151 Mass. 190 (1890); Tabor *v.* Hoffman, 118 N. Y. 30 (1889); Chain Belt Co. *v.* Von Spreckelsen, 117 Wis. 106 (1903); Park & Sons Co. *v.* Hartman, 153 Fed. 24 (1907).

[12] Grant *v.* Raymond, 6 Pet. (U. S.) 218 (1832); Wheaton & Donaldson *v.* Peters & Grigg, 8 Pet. (U. S.) 591 (1834); Wilson *v.* Rousseau & Easton, 4 How. (U. S.) 646 (1846); Bement *v.* Nat. Harrow Co., 186 U. S. 70 (1901).

[13] This conclusion necessarily follows from the reasoning upon which the right of a patentee to exercise monopolistic rights over his product is sustained; and so held in the case under discussion and in Park & Sons Co. *v.* Hartman, 153 Fed. 24 (1907). See also Chadwick *v.* Covell, 151 Mass. 190 (1890).

[14] 17 HARV. LAW REV. 415.

[15] Dr. Miles Med. Co. *v.* Park & Sons Co., 220 U. S. 373; Bobbs-Merrill Co. *v.* Straus, 210 U. S. 339 (1907); Park & Sons Co. *v.* Hartman, 153 Fed. 24 (1907), and cases there cited; Taddy & Co. *v.* Sterious & Co., [1904] 1 Ch. D. 354 (1903); McGruther *v.* Pitcher, [1904] 2 Ch. D. 306; Garst *v.* Hall & Lyon Co., 179 Mass. 588 (1901).

illegal as to the original vendees can be legalized as to sub-vendees by the operation of such rule. The statutory monopoly, by the terms of the patent laws, extends to the sale and use of the property created by the use of the invention. The right to impose restrictions upon sales of chattel property manufactured under patent, subsequent to the original sale by the patentee, if such exists,[16] is not an incident to the monopoly of production but is the result of statutory grant.

The right to impose conditions upon the sale or use of inventions, compositions, news or information, railroad tickets, trading stamps, and trade secrets is established.[17] Some courts sustain this right as incidental to the monopoly of the vendor in the property transferred. Because of this reasoning, other courts have yielded to the claims of vendors of articles in whose production trade secrets have been used, basing their decisions upon the existence of an analogous original monopoly. Monopoly of possession cannot, any more than monopoly of production, include the right to part with possession on illegal terms. This monopoly is an accidental similarity and should not be the basis of the determination of the rights of restriction on sales. Articles embodying trade secrets are articles of general commerce in whose unrestricted transfer the public is vitally interested. In this respect they differ essentially from the species of property above enumerated whose common attribute is that none are articles of commerce. The public policy governing their transfer is different from that governing commercial chattels; therefore the rights incident to their sale cannot be determined by rules of commercial law.[18]

Inventions, compositions, and trade secrets are but concepts

[16] Bement *v.* Nat. Harrow Co., 186 U. S. 70 (1901); Edison Phonograph Co. *v.* Kaufmann, 105 Fed. 960 (1901); Edison Phonograph Co. *v.* Pike, 116 Fed. 863 (1902); Victor Talking Machine Co. *v.* The Fair, 123 Fed. 424 (1903). Because of these and numerous additional authorities apparently sustaining the right of a patentee to retain dominion by contract over the re-sale of his articles after parting with all his title except this right, the writer hesitates in expressing his doubt as to the existence of the right of a patentee to impose general price restrictions upon the subsequent commerce in his product when he has sold the same for the purpose of re-sale.

[17] See citations under notes 19, 20, 21, and 22, *post.*

[18] Maxim Nordenfelt Co. *v.* Nordenfelt, [1893] 1 Ch. D. 630; Fowle *v.* Park, 131 U. S. 88 (1888); Harrison *v.* Glucose Co., 116 Fed. 304 (1902); Park & Sons Co. *v.* Hartman, 153 Fed. 24 (1907); Meyer *v.* Estes, 164 Mass. 457 (1895); Standard Fire Proofing Co. *v.* St. Louis Co., 177 Mo. 559 (1903); Hard *v.* Seeley, 47 Barb. (N. Y.) 428 (1865); Tode *v.* Gross, 127 N. Y. 480 (1891); and cases cited *post.*

which lose their values as saleable property as soon as given to the public use. The public has no interest in whether the invention or concept, process or formula, is used by the vendor or vendee; it has no right to compel the publication and hence loses no right by respecting the conditions upon which a confidential disclosure is made.[19] Not to respect these conditions would prevent the transfer of this species of property and would result in injury to the public.[20] So, too, news and information are vendible only so long as undisclosed or confidentially communicated. A general publication results in the destruction of marketable value. Hence the policy of the law is to prevent a public disclosure by one who has contracted for a restricted use.[21]

Railroad tickets and trading-stamp agreements are in the nature of contracts for personal service and neither can properly become the subject of general commerce.[22] Like all contracts personal in their nature, they can be transferred and assigned only with the consent of both contracting parties and only upon the conditions to which the contracting parties assent.

These characteristics so widely differentiate each of these kinds of property from chattel property in whose manufacture a trade secret has been employed as to destroy any analogy of rights based upon the original monopoly of possession. The mere use of a trade secret in production does not change the character of the monopoly of possession of the article produced. The producer of any chattel has, until sale, a monopoly of possession in the article produced by him. It follows that the monopoly of possession, and the rights incident thereto, are not dependent upon the employment of a trade secret, and that the right to maintain restrictions upon future sales must be determined by the rules governing the transfer of chattel property in general.

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[19] Central Transportation Co. *v.* Pullman Palace Car Co., 139 U. S. 24, 53 (1890); Park & Sons Co. *v.* Hartman, 153 Fed. 24, 30 (1907).

[20] Maxim Nordenfelt Co. *v.* Nordenfelt, [1893] 1 Ch. D. 630.

[21] Exchange Tel. Co. *v.* Gregory & Co., [1896] 1 Q. B. 147; Board of Trade of City of Chicago *v.* Christie Grain and Stock Co., 198 U. S. 236 (1904); Nat. Tel. News Co. *v.* Western Union Tel. Co., 119 Fed. 294 (1902); Dodge Co. *v.* Construction Information Co., 183 Mass. 62 (1903); Jewelers' Merc. Agency Co. *v.* Jewelers' Pub. Co., 84 Hun (N. Y.) 12 (1895), 155 N. Y. 241 (1898).

[22] L. & N. R. Co. *v.* Bitterman, 128 Fed. 176 (1904), 144 Fed. 34 (1906), 207 U. S. 205 (1907); Sperry & Hutchinson Co. *v.* Mechanics' Clothing Co., 128 Fed. 800 (1904), 135 Fed. 833 (1904); Same *v.* Temple, 137 Fed. 992 (1905); Park & Sons Co. *v.* Hartman, 153 Fed. 24, 31 (1907).

The primary test of what is unlawful at common law, as in restraint of trade, is the effect of the restraint upon public interests.[23] Any classification of permissible restraints must respond to this basic test, and all subordinate bases of such classifications must imply, as a primary premise, that the public interests are not injuriously affected by the permitted acts.

A careful analysis of the numerous authorities upon this subject discloses that the ruling cases respond to the above test.[24] There is some slight confusion in terminology — a confusion arising from the paucity of our language rather than from lack of definite thought. Restraints are referred to as "general" and "partial." The facts to which these terms have been applied show conclusively that "general" is not used as synonymous with "total," nor does "partial" mean "fractional." "General" is used whenever the restraint affects the general public interests. "Partial" is used when the restraint affects primarily the particular interest of the individual, without being so extensive as to affect injuriously the general interests of the public. Thus a fractional restraint is "general" if it is of such magnitude as to affect the public; a total restraint is necessarily "general" if it covers any subject of general trade and commerce.

From these premises two broad propositions are to be deduced: first, general restraints of trade are always unlawful;[25] and, second, partial restraints of trade are sometimes legal.

Under this second division falls an extensive subordinate classi-

[23] 2 Parsons on Contracts, 7 ed., 887; Fowle *v.* Park, 131 U. S. 88 (1889); Finck *v.* Schneider Granite Co., 187 Mo. 244 (1904); Charleston, etc. Co. *v.* Kanawha Co., 58 W. Va. 22 (1905).

[24] Central Transportation Co. *v.* Pullman Palace Car Co., 139 U. S. 24, 53 (1890); Cummings *v.* Union Blue Stone Co., 164 N. Y. 401, 404 (1900); Vickery *v.* Welch, 19 Pick. (Mass.) 523 (1837).

[25] "If a man be possessed of a horse or any other chattel, real or personal, and gives his whole interest or property therein, upon condition that the donee or vendee shall not alien the same, the same is void, because his whole interest and property is out of him, so that he hath no possibility of reverter; and it is against trade and traffic and bargaining and contracting between man and man." Coke on Littleton, Sec. 360. *In re* Greene, 52 Fed. 104, 116 (1892); United States *v.* Addyston Pipe & Steel Co., 85 Fed. 271 (1898), aff. 175 U. S. 211 (1899); Swift & Co. *v.* United States, 196 U. S. 375 (1905); Pacific Factor Co. *v.* Adler, 90 Cal. 110 (1891); Santa Clara, etc. Co. *v.* Hayes, 76 Cal. 387 (1888); Chicago, etc. Coal Co. *v.* People, 214 Ill. 421 (1905); Cohen *v.* Berlin & Jones Envelope Co., 166 N. Y. 292 (1901); State *v.* Standard Oil Co., 49 Oh. St. 137 (1892); Texas Standard Oil Co. *v.* Adoue, 83 Tex. 650 (1892).

fication, because, although the public interests, in the commercial sense, may not be directly affected by the restraint in question, still the public is interested in preventing the individual from restraining himself in the free exercise of his energies beyond what the circumstances of his case may reasonably demand. Hence, when once it has been determined that the restraint is not of sufficient breadth to affect injuriously the commercial-economic interests of the public, *i. e.*, that it is partial, the further question must be determined whether the restraint is of such character as to affect injuriously the individual-economic public interests, in restraining an individual more than the circumstances of the transaction make reasonably necessary.[26]

The rule is established that a restraint of trade to be permissible must be ancillary to the main object of the contract by which it is imposed.[27] When the restraint is the principal object of the contract it cannot be reasonably necessary for the protection of the covenantee, for the protection contemplated by the rule is to safeguard him in the enjoyment of the benefits attainable under the principal contract, or to protect him against an improper use of its benefits by the covenantor.

Applying the above principles to the restraints involved in a system of contracts to fix prices for all the sales of a distinct article of commerce, it would appear that they are illegal because general and because, even if partial, unreasonable.

It would be difficult to conceive of a restraint of trade more complete than one seeking to fix the prices on all sales from the manufacturer through the intermediate dealers to the consumer. The manufacturer restrains himself by agreeing to sell at only one price and only to contracting dealers. All competition between wholesale dealers is destroyed by their agreement to sell only at a minimum price and only to authorized purchasers. The retail dealer likewise is removed from the possibility of competition by his agreement to sell at fixed prices and to none other than the consumer. No discoverable room for competition is left from the manufacturer to the consumer. The merchandise, the subsequent trade in which the manufacturer is thus attempting to control,

[26] Gibbs *v.* Baltimore Gas Co., 130 U. S. 409 (1888); Nordenfelt *v.* Maxim Nordenfelt Co., [1894] A. C. 535, 567.

[27] United States *v.* Addyston Pipe & Steel Co., 85 Fed. 271, 282 (1898).

is a separate and distinct article of trade. Being manufactured under secret processes and formulæ which the single producer alone has power to use, no other manufacturer can make it. There are of course other preparations used for the same purposes, but the articles controlled are, from their very nature, all the articles of their precise kind in commerce. The attempted restraint is therefore complete. Even though the public might not have much general interest in the trade in the articles in question, when the public has some interest and the restraint is total, the unimportance of the trade does not prevent the restraint from being general.[28]

An exhaustive classification of permissible restraints of trade is found in the opinion of Judge Taft in United States *v.* Addyston Pipe & Steel Co.[29] If in any of the five classes there enumerated, the right of the seller of chattels to fix prices of re-sale could fall only under the fourth, as an agreement "by the buyer of property not to use the same in competition with the business retained by the seller." Assuming that a general contract system fixing prices on all sales and re-sales is not illegal as in general restraint of trade, and that the covenants are ancillary to a principal contract of sale, under the foregoing test, the question still remains as to whether they are necessary for the protection of the business retained by the seller. The manufacturer of chattels who does not sell the same to the consumer is not in competition with the dealer to whom he sells for such distribution. Regardless of whether or not his immediate vendees secure a satisfactory price in their sales, the manufacturer, because of his monopoly of production and initial sale, secures such price as he may desire. Consequently such contracts cannot fall within Judge Taft's fourth class of permitted partial restraints.

It is true that the original vendor of chattels may be limited in his sales by the fact that his vendees are subjected to such competition as to prevent them from making a reasonable profit in the re-sale of his goods, but this is a disadvantage incidental to the distribution of chattels through intermediaries to the consumer. The manufacturer has no more right to overcome this disadvantage by identical contracts with all intermediate vendors than such

[28] Montague & Co. *v.* Lowry, 193 U. S. 38 (1904).

[29] 85 Fed. 271, 282 (1898).

vendors would have by agreement with each other. Such agreements between dealers have uniformly been held contrary to the public interest.[30]

In conclusion it might be suggested that public policy, apart from that involved in the technical questions of restraint of trade, should oppose the enforcement of such systems of fixing prices. The inducement now offered for the disclosure of beneficial discoveries, to the ultimate advantage of the general public, includes a monopoly of manufacture, use, and sale.[31] To sanction and establish any part of these as rights of the owners of general chattel property is to reduce the consideration for the disclosure of inventions.

A second consideration adverse to the establishing of such right is the means it would afford to the large producers, or so-called "trusts," of doing what the public is now using every means to prevent their doing. The ultimate object of all producers is to enlarge the profit which they are to receive for their productions. If a larger profit could be insured to the intermediate dealer he would be willing to pay an enhanced price to the manufacturer. To legalize the system of fixing prices would furnish the "trusts" the most simple and least expensive method of accomplishing this end. The establishment of such right would render nugatory the efforts of a quarter of a century to enforce the public policy declared in all the anti-trust statutes.

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[30] People *v.* Sheldon, 139 N. Y. 251 (1893); People *v.* Milk Exchange, 145 N. Y. 267 (1895); United States *v.* Addyston Pipe & Steel Co., 85 Fed. 271 (1898), aff. 175 U. S. 211 (1899); Montague & Co. *v.* Lowry, 193 U. S. 38 (1904).

[31] Bement *v.* National Harrow Co., 186 U. S. 70 (1902); Heaton, etc. Co. *v.* Eureka Specialty Co., 77 Fed. 288 (1896); Dickerson *v.* Tinling, 84 Fed. 192 (1897); Edison Phonograph Co. *v.* Kaufmann, 105 Fed. 960 (1901); Edison Phonograph Co. *v.* Pike, 116 Fed. 863 (1902); Victor Talking Machine Co. *v.* The Fair, 123 Fed. 424 (1903).